

## **DVBE PROGRAM REQUIREMENTS / VIOLATIONS AT-A-GLANCE**

To enable State of California contractors and contracting officials to better understand, identify, and report cases of potential DVBE program violations, they must be aware of the requirements placed on Disabled Veteran Business Enterprise (DVBE) contractors, subcontractors or suppliers to provide a “commercially useful function.” They also need to be aware of and understand the requirements placed on the qualifying disabled veteran(s) to maintain at least 51% management and operational control of the DVBE to remain eligible for certification as a DVBE.

This information is meant to provide a general understanding of the regulations relevant to program violations related to the DVBE Participation Program. The information found herein has been excerpted and paraphrased from the actual codes and regulations. Readers should refer to the actual code or regulation referenced for complete information.

Assembly Bill (AB) 669 and Senate Bill (SB) 1008 were signed by the Governor and take effect 1-1-04. Assembly Bill 669 amends language in Military and Veterans Code Section 999. Senate Bill also amends language in Military and Veterans Code Section 999 and adds to Public Contract Code Section 10115.9. **Legislative changes are provided in bold and indicate that they are effective 1-1-04.**

### **OWNERSHIP AND MANAGEMENT / OPERATIONAL CONTROL REQUIREMENTS FOR DISABLED VETERAN BUSINESS ENTERPRISE(S)**

#### **Military and Veterans Code Section 999(g):**

To meet certification requirements and retain eligibility, one or more disabled veterans must own at least 51% of the business. Additionally, daily business operations must be managed and controlled by one or more disabled veterans [the disabled veteran(s) who manages and controls the business is not required to be the disabled veteran business owner(s)]. **Effective 1-1-04, AB 669 amends Military and Veterans Code Section 999(f) to require that the disabled veteran be domiciled in the State of California. Effective 1-1-04, SB 1008 added to Public Contract Code Section 10115.9: A limited liability company may be certified as a DVBE pursuant to this article if the limited liability company is wholly owned by one or more disabled veterans.**

#### **California Code of Regulations, Title 2, § 1896.61(f):**

To meet certification requirements and retain eligibility, the qualifying disabled veteran(s) must maintain management and operational control of the business. To have operational control, the qualifying disabled veteran(s) must demonstrate that he/she independently makes basic decisions in daily operations. He or she must maintain an active role in controlling the business. No formal or informal restrictions may exist to limit voting power or control of the business by the qualifying disabled veteran(s).

The qualifying disabled veteran(s) controls the operation of the firm in the following areas:

1. Financial
2. Bonding
3. Supervision-direct responsibility for subordinates
4. Work Force-direct responsibility for subordinates or subcontractors
5. Equipment
6. Materials
7. Facilities (office/yard)

The qualifying disabled veteran(s) must be personally responsible for at least one of the following:

1. Negotiations, execution and signature of contracts.
2. Execution (signature) of financial transactions and agreements (credit, banking, bonding).

## COMMERCIALLY USEFUL FUNCTION DEFINITION

### **California Code of Regulations, Title 2, § 1896.61(l) and Military and Veterans Code 999(e)(2):**

The term "DVBE contractor, subcontractor or supplier" means any person or entity that satisfies the ownership (or management) and control requirements of Section 1896.61(f); is certified in accordance with Section 1896.70; and provides services or goods that contribute to the fulfillment of the contract requirements by performing a commercially useful function. ***Effective 1-1-04, AB 669 amended Military and Veterans Code 999(f) to include the requirement for the DVBE to perform a "commercially useful function," and added to the definition as indicated in bold below. Note: AB 669 also amended GC 14837 to require that certified small businesses and microbusinesses must also perform a commercially useful function.***

A DVBE contractor, subcontractor or supplier (person or entity) is considered performing a commercially useful function when it meets the following criteria:

1. The business concern, person or entity is: responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing or supervising the work involved; and performing work that is normal for its business services and functions, and
2. The business concern, person or entity is not further subcontracting a greater portion of the work than would be expected by normal industry practices.

**A DVBE contractor, subcontractor or supplier (person or entity) will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation. (Military and Veterans Code 999(f) (2) (B), effective 1-1-04.)**

**Effective 1-1-04, SB 1008 amends Military and Veterans Code 999.2 to add:**

**(b) For purposes of this section:**

**(1) "Broker" or "agent" means any individual or entity, or any combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more certified disabled veterans has 51 percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.**

**(2) "Equipment" means any piece of equipment that is used or provided for rental to any state agency, department, officer, or other state governmental entity, including equipment for which operators are provided.**

**(3) "Equipment broker" means any broker or agent who rents equipment to an awarding department.**

**(c) A disabled veteran business enterprise that rents equipment to an awarding department shall be deemed to be an equipment broker unless one or more disabled veterans has 51-percent ownership of the quantity and the value of each piece of equipment. If the equipment is owned by one or more disabled veterans, each disabled veteran owner shall, prior to performance under any contract, submit to the awarding department a declaration signed by the disabled veteran owner stating that the owner is a disabled veteran and providing the name, address, telephone number, and tax identification number of the disabled veteran owner. Each disabled veteran owner shall submit his or her federal income tax returns to the administering agency pursuant to subdivision (g) as if he or she were a disabled veteran business enterprise. The disabled veteran business enterprise of a disabled veteran owner who fails to submit his or her tax returns will be deemed to be an equipment broker.**

**(d) A disabled veteran business enterprise that rents equipment to an awarding department shall, prior to performing the contract, submit to the awarding department a declaration signed by each disabled veteran owner and manager of the enterprise stating that the enterprise obtained the contract by representing that the enterprise was a disabled veteran business enterprise meeting and maintaining all of the requirements of a disabled veteran business enterprise. The declaration shall include the name, address, telephone number, and tax identification number of the owner of each piece of equipment identified in the contract.**

**(e) State funds expended for equipment rented from equipment brokers pursuant to contracts awarded under this section shall not be credited toward the 3-percent goal.**

**(f) A disabled veteran business enterprise that is a broker or agent and that obtains a contract pursuant to subdivision (a) shall, prior to performing the contract, disclose to the awarding department that the business is a broker or agent. The disclosure shall be made in a declaration signed and executed by each disabled veteran owner and manager of the enterprise, declaring that the enterprise is a broker or agent, and identifying the name, address, and telephone number of the principal for whom the enterprise is acting as a broker or agent.**

**(g) (1) A disabled veteran business enterprise, and each owner thereof, shall, at the time of certification, submit to the administering agency complete copies of the enterprise's federal income tax returns for the three previous tax years.**

**(2) A disabled veteran business enterprise, and each owner thereof, shall submit to the administering agency complete copies of the enterprise's federal income tax returns that have a postcertification due date, on or before the due date, including extensions.**

**(3) A disabled veteran business enterprise that, and each owner thereof who, has not submitted to the administering agency complete copies of the enterprise's federal income tax returns for the three tax years preceding certification nor for each postcertification tax year for which a return was required to be filed, shall have 90 days to submit those returns.**

**(4) A disabled veteran business enterprise that fails to comply with any provision of this subdivision shall be prohibited from participating in any state contract until the disabled veteran business enterprise complies with the provisions of this subdivision. Funds expended involving a disabled veteran business enterprise during any period in which that enterprise is not in compliance with the provisions of this subdivision shall not be credited toward the awarding department's 3-percent goal.**

**(h) A disabled veteran business enterprise that fails to maintain the certification requirements set forth in this article shall immediately notify the awarding department and the administering agency of that failure by filing a notice of failure that states with particularity each requirement the disabled veteran business enterprise has failed to maintain.**

**Effective 1-1-04, SB 1008 also amends Military and Veterans Code 999.5(c) to read: An awarding department shall not credit toward the department's 3 percent goal state funds expended on a contract with a DVBE that does not meet and maintain the certification requirements.**

## DVBE PROGRAM VIOLATIONS

**Military & Veterans Code 999.9 (a)(1-5) and Public Contract Code (PCC) 10115.10 (a)(1-5):**  
**Effective 1-1-04, SB 1008 adds to Military & Veterans Code 999.9 as indicated below in bold.**  
It is unlawful for a person or firm to:

- Knowingly and with intent to defraud, or fraudulently obtain or retain Disabled Veteran Business Enterprise (DVBE) certification.
- Willfully and knowingly make a false statement with the intent to defraud, or to influence any entity's DVBE certification.
- Willfully and knowingly obstruct, impede or attempt to obstruct or impede any state official or employee who is investigating a business entity's qualifications regarding the requested acceptance or certification as a DVBE.
- Knowingly and with intent to defraud, obtaining or attempting to obtain public monies, **contracts, or funds expended under a contract, that are awarded by any state agency, department, officer, or other state government agency**, to which the person is not entitled under the DVBE Participation Program.
- Knowingly and with intent to defraud, fraudulently represent participation or a DVBE in order to obtain or retain a bid preference or a state contract.
- **Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.**
- **Willfully and knowingly aid or assist in, or procure, counsel, or advise, the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.**
- **Willfully and knowingly fail to file any declaration or notice with the awarding agency that is required by Section 999.2.**
- Establish, or knowingly aid in the establishment of, or exercise control over, a firm found to have violated any of paragraphs above.

## **VIOLATIONS ARE MISDEMEANORS AND PUNISHABLE BY IMPRISONMENT OR FINE AND VIOLATORS ARE LIABLE FOR CIVIL PENALTIES**

**Military and Veterans Code 999.9 (b):**  
**Effective 101-04, SB 1008 amended Military and Veterans Code 999.9 (b) as indicated in bold.**

Any person who violates any of the provisions of Military and Veterans Code 999.9, subdivision (a), shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding one thousand dollars (\$1,000), or by both. In addition, the person shall be liable for a civil penalty of **not less than ten thousand dollars (\$10,000) nor more than thirty thousand dollars (\$30,000) for the first violation, and a civil penalty of not less than thirty thousand dollars (\$30,000) nor more than fifty thousand dollars (\$50,000) for each additional or subsequent violation. A defendant who violates any of the provisions of subdivision (a) shall pay all costs and attorney's fees incurred by the plaintiff in a civil action brought pursuant to this section.**

## **VIOLATIONS ARE SUBJECT TO SUSPENSION BY DGS**

### **Military and Veterans Code 999.9 (c):**

**Effective 101-04, SB 1008 amended Military and Veterans Code 999.9 (c) as indicated in bold.**

- **The Department of General Services shall suspend** any person who violates subdivision (a) from bidding on, or participating as either a contractor, subcontractor, or supplier in, any state contract or project for a period of not less than three years, **and if certified as a disabled veteran business enterprise, the department shall revoke the business' certification for a period of not less than three years. An additional or subsequent violation shall extend the periods of suspension and revocation for a period of not less than five years. The suspension and revocation shall apply to the principals of the business and any subsequent business formed or financed by, or affiliated with, those principals.**
- The Department of General Services shall prohibit any business or person who fails to satisfy the penalties, costs, and attorney's fees imposed pursuant to subdivision (b) from further contracting with the state until the penalties are satisfied.

## **REPORTING SUSPECTED DVBE PROGRAM VIOLATIONS**

### **Military and Veterans Code 999.9 (d) and Public Contract Code § 10115.10 (a)(1-5):**

Program violations should be reported to the awarding department. Awarding agencies will investigate and report all alleged DVBE Participation Program violations to the Procurement Division, Office of Small Business and DVBE Certification (OSDC). The Procurement Division, Office of Small Business and DVBE Certification (OSDC), will subsequently forward the allegations to the attorney general for possible action.

## **ASSISTANCE WITH SUSPECTED PROGRAM VIOLATIONS**

Questions related to reporting potential DVBE program abuse, "commercially useful function," ownership and management and control by the qualifying disabled veteran(s), or the identity of the qualifying disabled veteran(s), should be directed to: Gloria Anderson, Certification Administration and Compliance Manager, OSDC, at 800.559.5529 or 916.375.4936, or e-mail at [gloria.anderson@dgs.ca.gov](mailto:gloria.anderson@dgs.ca.gov), or facsimile 916.375.4950.

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